IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6190 OF 1997
With
SPECIAL CIVIL APPLICATION NO. 6191 OF 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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M/S. HARIA GINNING AND PRESSING FACTORY - Petitioner(s)
Versus
MAMLATDAR & ORS. - Respondent(s)

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Appearance :
Shri Y.S. Mankad for Petitioner(s).
Shri I.M. Pandya, Assistant Government Pleader for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 30/07/2007

COMMON ORAL JUDGMENT

In each of the petitions, the petitioners, being aggrieved by

the orders dated 4th July, 1997 and 8th July, 1997 passed by the Additional Labour Commissioner, Gandhidham, Kutch and the Mamlatdar respectively, asking the petitioners to pay a sum of Rs.20,000/- for each child labour employed by them, are before this Court with a submission that the Assistant Labour Commissioner and the Mamlatdar acted absolutely illegally in issuing such directions.

2. The Mamlatdar-cum-Ex Officio Labour Inspector made inspections on 2nd May, 1997 in the factory premises of the petitioners, M/s. Anjar Ginning & Pressing Company and M/s. Haria Ginning & Pressing Factory. After recording the names of as many as nine persons in Special Civil Application No.6190 of 1997 and ten persons in Special Civil Application No.6191 of 1997, he observed that each of the owners/management of the factories was engaging young boys below 14 years of age and as their engagement was contrary to the provisions of the Child Labour (Prohibition & Regulation) Act, 1986 (hereinafter referred to as "the Act" for short), each was liable to be proceeded with. It was directed that Rs.20,000/- for each child labour be deposited with the Assistant Labour Commissioner or in the alternative, a legal action would be taken against them. The petitioners, *vide* their replies dated 14th May, 1997 in Special Civil Application No.6190 of 1997 and dated 17th May, 1997 in Special Civil Application No.6191 of 1997, submitted

that they had not violated any provisions of the Act. M/s. Haria Ginning & Pressing Factory submitted that four persons, namely, Hasinaben, Lilaben, Ratanba and Radhiben, were above 14 years of age, while five other children had come to serve the tiffin to the labours/workmen. They submitted that they had not committed any wrong. M/s. Anjar Ginning & Pressing Factory submitted that they had not committed any wrong, inspection note was wrong and the persons, who were not employed, were illegal shown to have been engaged as labours. In Special Civil Application No.6191 of 1997, the Mamlatdar *vide* his order dated 8th July, 1997, ordered that the explanation submitted by the employer/establishment cannot be accepted in view of the judgement of the Supreme Court and a sum of Rs.1,40,000/- would be recovered. In Special Civil Application No.6190 of 1997, it was ordered that no reasonable defence has been submitted and in light of the judgement of the Supreme Court, recovery has to be made. In Special Civil Application No.6191 of 1997, no counter affidavit has been filed, but, counter affidavit has been filed in Special Civil Application No.6190 of 1997. The affidavit is of one S. R. Bodal, Assistant Labour Commissioner, Gandhinagar. In the said affidavit, in paragraph 6, the author of the affidavit has stated as under:

> "…. *I further say that petitioner has not given any defence representation for 9 child labourers shown in Inspection remarks that 5 out of 9 child labourers are not their workers*

and not working in their factory and subsequently represents that 5 out of 9 child labourers are not working in their factory and not their workers, but, they are workers of others outside factory and the parties on whose behalf the job work was done brought their own worker. I say that 4 out of 9 child labourers shown in Inspection remarks and as against it, petitioner has produced evidence of age showing 4 workers being above 14 years or more in age and accepted their evidence. However, no satisfactory evidence are produced for remaining five workers and therefore, actions taken against petitioner is legal and valid."

3. Shri Mankad, learned Counsel for the petitioners, submitted that without making any inquiry or without affording any opportunity to the petitioners, the respondents could not direct recovery simply on the strength of the judgement of the Supreme Court. He also submitted that the reply to the show cause notice could not be treated to be the defence because present was a case where oral evidence ought to have been led in view of the fact that the petitioners had filed certain affidavits before the authority in support of their defence. He also referred to Section 14 of the Act to contend that either one should stand convicted or in an inquiry, he should be held guilty of committing violation of the provisions of the Act.

4. I pointedly asked Shri I.M. Pandya, learned Assistant

Government Pleader for the respondent-State, to show me something from the records, on the strength of which the statement has been made that “they are workers of other outside factory and the parties on whose behalf the job-work was done, brought their own worker.” Shri Pandya, after seeking instructions from Shri G.G. Sheth, submitted that there is no document with them on the strength of which such statement could be made in the affidavit. Shri Sheth informed the Court that Shri Bodal, the deponent of the affidavit, has already superannuated.

5. Section 3 of the Act provides that no child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on:

Provided that nothing in section 3 shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from Government.

6. Sub-section (1) of Section 14 of the Act provides for penalty in a case where any child is engaged to work in contravention of the provisions of Section 3. Sub-section 2 of Section 14 provides that a person who is convicted under Section 3 if commits a like offence, he

would be punished with a higher sentence and the jail sentence shall not be less than six months. Sub-section (3) of Section 14 provides that whoever fails to give notice as required by Section 9, or fails to maintain a register as required by Section 11 or makes any false entry in any such register, or fails to display a notice containing abstract of sections 3 and 14, as required by section 12, or fails to comply with or contravenes with any of the provisions of the Act or the rules made thereunder, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

7. Section 14 would apply to the case where somebody is sought to be prosecuted before the competent Court. Section 14 would not authorise a Mamlatdar or an Inspector to hold a person guilty of the offences, nor would they be entitled to award any punishment to the alleged wrongdoer. Once a person is *prima facie* found to be an offender, the Labour Department or Inspector or any competent Officer of the Labour Department would be required to file a complaint before the competent Judicial Magistrate and if they secure conviction of such offender, then, the Court would award such penalty, which may be the jail sentence or fine or both.

8. The Inspector or Officer of the Labour Court unless is

invested with the powers of the Magistrate under the provisions of the Act, he/they cannot exercise such powers. Section 14 of the Act is the only penal provision under the Act. It does not authorise the Labour Inspector, Assistant Labour Commissioner or any other person to impose any penalty. It is, however, to be noted that in the matter of ***M.C. Mehta vs. State of Tamil Nadu & Ors.***, reported at ***1997 (3) G.L.R. 2306***, the Supreme Court observed that the legislature had strongly desired prohibition of child labour, that Act 61 of 1986 is *ex facie* a bold step, that the provisions of the Act other than Part III came into force at once and for Part III to come into force, a notification by the Central Government is visualised by Section 1(3) of the Act, which notification covering all classes of the establishments throughout the territory of India was issued on 26th May, 1993. In paragraph 27 of the judgement, the Apex Court has observed as under:

> "*27. It may be that the problem would be taken care of to some extent by insisting on compulsory education. Indeed, Neera thinks that if there is at all a blueprint for tackling the problem of child labour, it is education. Even if it were to be so, the child of a poor parent would not receive education, if per force it has to earn to make the family meet both the ends. Therefore, unless the family is assured of income aliunde, problem of child labour would hardly get solved; and it is this vital question which has remained almost unattended. We are, however, of the view that till an alternative income is assured to the family, the question of abolition of child labour would*

really remain a will-o-the wisp. Now, if employment of child below that age of 14 is a Constitutional indication insofar as work in any factory or mine or engagement in other hazardous work, and if it has to be seen that all children are given education till the age of 14 years in view of this being a fundamental right now, and if the wish embodied in Article 39(e) that the tender age of children is not abused and citizens are not forced by economic necessity to enter avocation unsuited to their age, and if children are to be given opportunities and facilities to develop in a health manner and childhood is to be protected against exploitation as visualised by Article 39(f), it seems to us that the least we ought to do is see to the fulfilment of legislative intendment behind enactment of the Child Labour (Prohibition and Regulation) Act, 1986. Taking guidance therefrom, we are of the view that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs. 20,000/-; and the Inspectors, whose appointment is visualised by Section 17 to secure compliance with the provisions of the Act, should do this job. The inspectors appointed under Section 17 would see that for each child employed in violation of the provisions of the Act, the concerned employer pays Rs. 20,000/- which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund. The liability of the employer would not cease even if he would desire to disengage the child presently employed. It would perhaps be appropriate to have such a fund district wise or area wise. The fund so generated shall form corpus whose income shall be used only for the

> *concerned child. The quantum could be the income earned on the corpus deposited qua the child. To Generate greater income, fund can be deposited in high yielding scheme of any nationalised bank or other public body."*

The Apex Court observed that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs.20,000/-; and the Inspectors, whose appointment is visualised by Section 17 to secure compliance with the provisions of the Act, should do the job. The Supreme Court used the word 'offender' for the purpose of making recovery of the compensation. A person would be an 'offender' if he is held guilty by a competent Court. In the present case, according to Shri I.M. Pandya, learned Assistant Government Pleader, the prosecution is still pending before the learned Judicial Magistrate and the management/owners of the establishment have yet not been held guilty. The word 'offender' is not used in its loose sense, but, connotes a person against whom allegations are made. The word 'offender' has been used with a sense of responsibility to mean that a person who has been held guilty. Unless the person is held guilty by the competent Court, he cannot be declared to be the offender. *Prima facie*, in absence of the conviction of the wrongdoer and a finding by the competent Court that he is declared an 'offender', such compensation cannot be recovered from him.

9. Assuming that power is conferred upon the Inspector or the Mamlatdar or the Assistant Labour Commissioner to make recoveries from such person, who is alleged to have committed violations of the provisions of the Act, then, such Inspector, Mamlatdar or Assistant Labour Commissioner cannot act on the basis of their whims, caprice or arbitrariness. They cannot simply say that the written statement/show cause to the notice does not satisfy them, therefore, the recovery would be made. In cases like the present, an inquiry is required to be made and the inquiry must include production of oral, so also documentary, evidence. When a person comes before the authority and makes a submission that he had not committed any wrong and his defence was that as many as four persons were above the age of 14 years and other five had come to serve the tiffin upon the workers, then, present becomes a matter of disputed facts. It is to be seen that for other four, the defence was accepted, but, for the remaining five, the Assistant Labour Commissioner filed a false affidavit to mislead this Court. In absence of any document on record to reveal that the child labour was brought by the other industry, who had given job-work to the establishment, he could not have said that the child labour was brought by other workers who had come to complete the job-work of the third parties. In the matters like present, the defence cannot be rejected holding it to be *prima facie* bogus or worth rejection, the authority

cannot reject the defence on the ground that such authority was not satisfied. The satisfaction of the authority or the Court though is a perception of that authority, but, the authority or the Court cannot simply hold in two lines that they were not satisfied, therefore, they were rejecting the defences. Some order to be a legal order must have tenets of legal order; they must consider the case of both the sides, arguments raised by both the sides and the reasons for rejecting or accepting the arguments of one or the other side. The authority yet is not given jurisdiction to pick up one view and say that other is wrong. Before rejecting the view or defence, the authority or Court is required to hold that for further reasons, such defence is not palatable.

10. In the present matter, the Mamlatdar/Assistant Labour Commissioner did not make any inquiry, but, simply said that they were not satisfied with the reply to the notice of show cause. Such an approach cannot be protected even under the judgement of the Supreme Court in the matter of ***M.C. Mehta*** (*supra*). The orders passed by the Mamlatdar/Inspector and Assistant Labour Commissioner, for the reasons aforesaid, deserve to and are, accordingly, quashed.

11. Each of the petitions is allowed with costs. Rs.10,000/- in each case to be paid by the Labour Department to the petitioners within

fifteen days from today. The Labour Department, however, would be free to proceed in accordance with law. Rule is made absolute.

[R.S.Garg, J.]

*kamlesh**